No. 526

IN THE

# Supreme Court of the United States

OCTOBER TERM—1942

---

RUTLAND RAILROAD COMPANY'S RECEIVER,
*Petitioner,*

—*against*—

SIDNEY ABNER LAWRENCE,
*Petitioner.*

---

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

---

EDWIN W. LAWRENCE,
Rutland, Vermont,
*Attorney for Petitioner.*

## INDEX


| | Page |
|---|---|
| Summary Statement of Matter Involved | 1 |
| The Basis of this Court's Jurisdiction | 2 |
| Statement of Facts | 2 |
| Reasons for Allowance of Writ and Brief | 4 |


## TABLE OF CASES


| | Page |
|---|---|
| Ermin vs. Penn. R. R. Co. Dis. Court E. D. N. Y., 36 Fed. Supp. 936, 940 | 6 |
| Federal Employers' Liability Act as amended (Act of August 11, 1939, C 685 Section 1, 53 Stat. 1404, Vol. 45, U. S. C. A. Section 51, et seq.) | 2 |
| Plass vs. Central N. E. Ry. Co., 226 N. Y. 449; 123 N. E. 852 | 7 |
| Puggire v. Baldwin, (Kans.) 221 P. (2d) 183 | 7 |
| Rader vs. B. & O. R. R. Co., 108 Fed. 2d 980 Petition for Certiroari denied, 309 U. S. 682 | 5 |
| Seaboard Airline R. C. vs. Horton, 233 U. S. 492 | 2 |
| Southern Pacific Co. v. Industrial Accident Com. (Cal.) 120 P. (2d) 880 | 7 |
| Toledo, etc. R. Co. vs. Slavin, 236 U. S. 454 | 2 |
| U. S. C. A. Paragraph (b) of Section 344 | 2 |
| Vermont, Public Laws (1933), Chapter 264 | 1 |
| Vermont, Public Laws (1933), Sec. 6287 | 4 |
| Wright v. N. Y. C. R. Co. 263 App. Div. (N. Y.) 461 | 7 |

No.....

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1942.

---

RUTLAND RAILROAD COMPANY'S RECEIVER,
*Petitioner,*

*against*

SIDNEY ABNER LAWRENCE,
*Petitionee.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

Petitioner respectfully submits his petition for a writ of certiroari to review the decision of the Supreme Court of the State of Vermont affirming an award of the Commissioner of Industrial Relations in favor of petitionee.

## SUMMARY STATEMENT OF MATTERS INVOLVED

Petitionee sought an award against petitioner from the Commissioner of Industrial Relations of the State of Vermont under the so-called Workmen's Compensation Law (Public Statutes of Vermont, Chapter 264) on account of injuries received by him on August 8, 1941, while riding on and participating in the operation of a so-called weeder at Vergennes, Vermont, on the main line of the Rutland Railroad which extends through the state of Vermont into New York state.

The petitioner claims that he and the petitionee, who was in the employ of the petitioner at the time of the acci-

dent, were engaged in interstate commerce within the meaning of the Federal Employers' Liability Act as amended (Act of August 11, 1939, C 685 Section 1, 53 Stat. 1404, Vol. 45, U. S. C. A. Section 51 et seq). The amendment brings within the scope of the Federal Employers' Liability Act "any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce."

## THE BASIS OF THIS COURT'S JURISDICTION

The right of the Supreme Court of the United States to grant this petition is claimed under paragraph (b) of Section 344 U. S. C. A. because a right, privilege or immunity is specially set up and claimed by the petitioner under the constitution of the United States and the act of congress above referred to. As the petitionee was engaged in interstate commerce within the meaning of the Federal Employers' Liability Act his only remedy is under that act. By this act Congress has assumed entire jurisdiction over liability of carriers engaged in interstate commerce to their employees to the exclusion of any state legislation upon that subject.

Petitioner claims the right to have this liability determined exclusively by said act of congress. Toledo, etc. R. Co. vs. Slavin, 236 U. S. 454; Seaboard Airline R. C. vs. Horton, 233 U. S. 492.

The Supreme Court of the State of Vermont, which is the court of last resort in that state, denied the petitioner this right, holding that the petitionee was not engaged in interstate commerce within the meaning of the act and that he was entitled to compensation under the Workmen's Compensation Law of the state of Vermont.

## STATEMENT OF FACTS

The Commissioner of Industries found:

"The Rutland Railroad Company, William E. Navin, Receiver, is a common carrier by railroad principally engaged in interstate commerce. Its main lines run from Ogdensburg, New York, through Alburg, Vermont, to Rutland and Bellows Falls, Vermont, and from Rutland to North Bennington and Bennington, Vermont and from North Bennington to Chatham, New York. It operates through trains over these tracks daily in and out of the state of Vermont."

The opinion of the Supreme Court of the state of Vermont says:

> "On August 8, 1941, the claimant was employed by the defendant on its main line a few miles south of Vergennes on a machine known as a weeder. This is a motor car having appliances attached to and extending from it which cut the weeds from the ballast on the right of way and pull them up from the same and then smooth the furrows made by this pulling operation. 'The weeding is done in the summer before a certain date, generally in compliance with the state law (P. L. 6287) requiring that all weeds growing within the surveyed boundaries of the railroad be cut and destroyed between July 1 and 15 in each year.'
>
> On the day in question the weeder did not contain any person or thing in route from or to any place beyond this state and it had not come from and was not destined to any place beyond the state.
>
> The claimant who was a 'wing man' on the car reached out to pick up the heavy drag chain and in doing so strained his back which hurt him in the same spot as on the occurrence of May 20, 1940, when he lifted the pipe. The claimant at the time of the accident was instructing another employee in the operation of the appliances on his side of the machine."

The Supreme Court also makes the following statement in regard to the Commissioner's findings and holdings:

> The Commissioner found that the claimant had been totally disabled from his back injury from August 25, 1941, to the date of hearing and also made findings as to his average weekly wages.
>
> The Commissioner held that on August 8th the weeder was not an instrumentality of interstate transportation of commerce and was not then being used in such commerce; that the claimant at this time was not employed in such commerce, and was not so employed at the time of the first accident; that the evidence tends to show and he holds that at the time of both accidents the particular service in which the claimant was engaged was not interstate transportation of commerce or in work so closely related to it as to be

practically a part of it, so that the cause does not come within the purview of the Federal Employers' Liability Act, 45 U. S. C. A. sec. 51 and consequently he (the Commissioner) has jurisdiction of the case. There was a finding and a holding that the claimant's back injuries of May 20, 1940, and August 8, 1941, were personal injuries by accident arising out of and in the course of his employment with the defendant. * * *

* * * it sufficiently appears, especially from the above quoted portion of the findings, that the Commissioner found the weeding on the day in question was being done in compliance with P. L. 6287. The findings might well have been clearer on this point but they are clear enough to reasonably warrant the construction that we have given them.

P. L. 6287 reads as follows: "A person or corporation operating a railroad in this state shall cause all thistles and noxious weeds growing within the surveyed boundaries of such railroad to be cut and destroyed between July 1, and 15 in each year." By sec. 6288 it is provided that in case of failure so to do in a town through which such road passes the selectmen of that town after notice and failure of compliance shall cause the thistles and weeds to be cut at the expense of the town which shall then be entitled to recover of the operator of the railroad one hundred dollars in an action of tort.

## REASONS FOR ALLOWANCE OF WRIT AND BRIEF

The weeder was an instrumentality of interstate commerce. Its only use was to condition the interstate right of way of petitioner.

The weeding and conditioning was part of maintenance of the ballast and road bed. The operation of this machine on the main line of this interstate railroad is related to and as much a part of interstate commerce, as replacement of a tie or rail, renewal of ballast, rebuilding a bridge, painting a bridge, etc. When engaged in operating this machine an employee is engaged in interstate commerce the same as an employee engaged in any of the above mentioned tasks or carrying material for such purposes.

It is obvious that this work would be done anyway, regardless of any state law on the subject for, whoever saw,

or heard of, such an interstate roadbed in operation which was allowed to grow up to weeds, etc.

The mere fact that the railroad and the employee, at the particular time of the accident, were doing something in respect to the interstate right of way which the state law required is wholly immaterial, although the Supreme Court of the state of Vermont makes it really the determining factor in this case. The state law imposes certain duties by way of police regulation upon railroads engaged in interstate commerce. The law of Vermont requires a railroad to maintain fences, cattle guards, crossing signs, to sound signals at crossings, etc. The fact that the state law requires such things does not make an employee doing them any less a person engaged in interstate commerce than as if the state law did not require them. They are all necessary for maintenance and operation of the interstate railroad and employees engaged in maintaining and operating them are engaged in interstate commerce.

The decision of the Vermont Supreme Court is in conflict with the decision of this Court in Rader vs. B. & O. R. R. Co., 108 Fed. 2d 980. Petition for Certiorari denied, 309 U. S. 682. In this case the Court of Appeals said:

> "A more serious question, however, is whether plaintiff, as a section man, in cutting brush on the right-of-way, was engaged in interstate transportation, or in work so closely related to such transportation as to be practically a part of it. Defendant states its position thus: * * *. In such work, which is static in character, the requisite of motion or action in interstate transportation is lacking entirely. Such work does not directly or intimately concern interstate transportation as such in essential meaning.
>
> * * *
>
> If "tracks and bridges are as indispensable to interstate commerce" as are engines and cars, as was held in the Pederson case, and which we do not think has been overruled, we think it must be held that a section man engaged in clearing the roadbed or right-of-way of brush, is likewise engaged in work indispensable to interstate commerce, as applied to transportation therein. We recognize that such work is somewhat

more remote than the actual repair of the track or bridge over which the trains move, but at the same time we think it must be recognized that a roadbed or right-of-way free from obstacles, including weeds, brush and timber so that an unobstructed view thereof may be had, is highly essential to the safety and protection of those who are passengers of the railroad, as well as the general public using the highways which intersect such railroads. If so, such work facilitates interstate transportation.

"We conclude that plaintiff's employment was such as to bring him within the terms of the Act relied upon."

The Vermont Supreme Court undertook to distinguish the Rader case from the present case by saying of the former that the cutting of brush and trees was involved instead of weeds. There isn't any sense to this. In its opinion the Court of Appeals, as will be observed in the above quotation, classifies weeds with brush and timber. If there is any distinction between the two it is in favor of holding that the weeding which was being done by petitionee was in furtherance of interstate commerce. He was actually on the rails and roadbed which constituted the interstate roadway and was operating a machine over that roadway for its maintenance, whereas the man who was cutting brush and trees was off the immediate roadbed and was working with his own hands and cutting individually.

The purpose of congress in making the amendment will be thwarted if distinctions of this kind are allowed to be made by state tribunals. The history of this amendment is set out in the opinion of Ermin vs. Penn. R. R. Co. Dis. Court E. D. N. Y., 36 Fed. Supp. 936, 940. In that opinion it is stated:

There are multitudinous decisions raising hair-splitting interpretations as to whether or not the employee at the time of his accident was actually engaged in interstate commerce. It was to avoid this difficulty that Congress enacted the amendment. It was, undoubtedly, the intent of Congress to include within the scope of the Federal Employers' Liability Act all employees, even those performing intrastate

**Weeds, if left to grow, would conceal obstacles on the track and become a greater menace to safe operation than brush outside of the track.**

services whose employment meets the requirements of the Act. It is no longer subject to doubt that Congress had the power to include intrastate employment, which affects interstate commerce, within the scope of the Federal Employers' Liability Act.

The Court should not by a strained construction override the intent of the Congress but should rather decide questions in accordance with the views expressed by the Congress. Here the Congress was trying to remedy a fault, it was enacting legislation which would not require a railroad employee to draw a hairline to determine whether or not at the moment of the accident he was actually engaged in interstate commerce. The Congress was correcting an evil which existed which prevented railroad employees from receiving a just determination of their rights.

The Supreme Court of the state of Vermont relies strongly upon Plass vs. Central N. E. Ry. Co., 226 N. Y. 449; 123 N. E. 852.

This case was decided in 1919—twenty years before the amendment. The trend of the decisions in New York state, as well as other states, since the amendment indicates clearly that such a decision as was rendered in that case would not now be rendered by those courts in view of the amendment. See Wright vs. N. Y. C. R. Co., 263 App. Div. 461; 33 N. Y. S. 2d 531. See also Southern Pacific Co. v. Industrial Accident Com. (Cal.) 120 P. (2d) 880; Puggue v. Baldwin, (Kans.) 221 P. (2d) 183.

WHEREFORE YOUR PETITIONER RESPECTFULLY PRAYS That a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Vermont, commanding that Court to certify and send to this Court for its review and determination, at a date certain to be therein named, and for a complete transcript of the record and all proceedings in the case there entitled—Sidney Abner Lawrence against Rutland Railroad Company, William E. Navin, Receiver, appeal from the Commissioner of Industrial Relations; that said judgment of said Supreme Court of the State of Vermont may be reversed by this Honorable Court; and that

your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

Dated this 26th day of October, 1942.

Respectfully submitted,

EDWIN W. LAWRENCE,

Rutland, Vermont,
Attorney for Rutland Railroad Company's Receiver.